

John Heenan
Bishop & Heenan Law Firm
1631 Zimmerman Trail
Billings, MT 59102
406-839-9091
john@bishopandheenan.com

Timothy M. Bechtold
Bechtold Law Firm, P.L.L.C.
PO Box 7051
Missoula, MT 59807
406-721-1435
tim@bechtoldlaw.net

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

**WILL BALLEW, on behalf of himself and
all others similarly situated,**

Plaintiff,

VS.

VW Credit, Inc.

Defendant.

Plaintiff Will Ballew alleges as follows:

- 1 1. Since at least 2009, Volkswagen Group of America (VW) intentionally
2 violated the laws of the United States and the regulations of the United
3 States Environmental Protection Agency (EPA) by selling automobiles in the
4 United States that had a sophisticated software algorithm in the engine
5 control module. The purpose of the software algorithm, defined in the
6 Clean Air Act as a “defeat device,” was to detect when a car’s engine was
7 being tested for compliance with emissions standards, and switch the car to
8 an operating mode that would enable the car to appear to pass vehicle
9 emissions standards. At all times other than in emissions testing mode, the
10 engine control module would suppress emission controls and switch the
11 car’s operating mode to emit up to forty times the quantity of nitrogen
12 oxides allowed by federal emissions standards.
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- 19 2. Nitrogen oxides are highly reactive gases that contribute to ground-level
20 ozone, fine particulate, and nitrogen dioxide pollution. Exposure to these
21 pollutants is a recognized cause of respiratory illnesses.
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- 23 3. The EPA has established regulations with strict emissions standards, and
24 every vehicle sold in the United States must meet these emissions
25 standards to help control air pollution.
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- 1 4. On September 18, 2015, the EPA sent VW a Notice of Violation informing
2 VW that the EPA had discovered the defeat device in 2.0 liter diesel engines
3 in at least the following diesel models of VW's vehicles (the "Violating
4 Vehicles"): 2009-2015 VW Jetta; 2009-2015 VW Beetle; 2009-2015 VW
5 Golf; 2014-2015 VW Passat; and 2009-2015 Audi A3.
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- 7 5. Discovery may reveal that additional vehicle models and model years are
8 properly included as Violating Vehicles.
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- 10 6. Since VW introduced its 2.0L TDI Clean Diesel engine in 2008, VW has touted
11 it as a "fantastic power train" that "gives very good fuel economy" that "is
12 also good for the environment because it puts 25% less greenhouse gas
13 emissions than what a gasoline engine would, . . . cuts out the particulate
14 emissions by 90% and the emissions of nitrous oxide are cut by 95%, . . .
15 [and is] clean enough to be certified in all 50 states." (Statement of
16 Volkswagen Group of America, Inc.'s Chief Operating Officer Mark Barnes,
17 to *The Business Insider*, October 9, 2009.)
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- 19 7. Mark Barnes did not add that the VW clean diesel vehicles were engineered
20 to be able to detect when they were being tested and to switch the manner
21 in which the emissions system operated to be able to achieve those
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1 reductions in nitrogen oxides. Mark Barnes also did not disclose that, after
2 circumventing the emissions laws of the United States, every one of VW's
3 clean diesel vehicles' emissions systems were programmed to run in a model
4 that would result in up to 40 times the allowable quantities of nitrogen
5 oxides being released into the atmosphere under normal operating
6 conditions.
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10 8. VW relied on this fraud to position itself as the market leader in automotive
11 diesel sales in the United States. According to VW's documents, VW had
12 captured 78% of the automotive diesel sales in the United States by 2013.
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14 9. The EPA has directed VW to recall all the Violating Vehicles and repair them
15 to comply with emissions standards. Even if a repair is possible, which is not
16 certain at this time, the repair will cause substantial changes in performance
17 and efficiency in the Violating Vehicles, thus Plaintiff's and class members'
18 vehicles will no longer perform as they did when purchased and as
19 advertised.
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23 10. In its September 18, 2015 letter to Volkswagen, the EPA said that it was illegal
24 for VW to offer to sell or place in the stream of commerce the Violating
25 Vehicles.
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1 11. Approximately 500,000 Volkswagen vehicle purchase or lease contracts are
2 tainted by the fraud of VW. Many if not most of purchases of the Violating
3 Vehicles are financed by consumers. Many if not most of the consumers
4 financed through Defendant VW Credit, Inc.
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7 12. VW Credit, Inc. describes itself as "the captive finance company which
8 services Volkswagen, Audi and Ducati customers, authorized automotive
9 dealers and their affiliated stores as Volkswagen Credit and Audi Financial
10 Services." See <http://www.vw.com/financial-services>.
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13 13. Defendant VW Credit is a wholly-owned subsidiary of Volkswagen Group of
14 America, Inc., which is a wholly owned subsidiary of Volkswagen AG.
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16 14. Since the revelation of VW's admitted emission fraud, over 175 private class
17 action suits have been filed in at least 40 judicial districts before 60 district
18 judges seeking damages or rescission of the purchase contracts, or both. In
19 addition, State Attorneys General actions have been filed.¹
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22 15. None of the actions heretofore filed are known to have addressed one of the
23 most important questions of consumers: "Do I have to continue making
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26 ¹ Brief, Dkt. #25, IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES
27 PRACTICES, and PRODUCTS LIABILITY LITIGATION, MDL No. 2672 before the
28 Judicial Panel on Multi-District Litigation.

1 payments to VW?"

2 16. The answer to the question is "No."

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4 17. In 1975, the Federal Trade Commission (FTC) enacted a Rule titled as the
5 Trade Regulation Rule Concerning the Preservation of Consumers' Claims and
6
7 Defenses. 16 C.F.R. §433.2. It is now more commonly referred to as the "FTC
8 Holder Rule" or the "Holder Rule." As explained by the FTC, the Holder Rule
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10 "is designed to prevent the widespread use of credit terms which compel
11 consumers to pay a creditor even if the seller's conduct would not entitle the
12
13 seller to be paid. It is designed to preserve the consumer's legally sufficient
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15 claims and defenses so that they may be asserted to defeat or diminish the
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17 right of a creditor to be paid, where a seller who arranges financing for a
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19 buyer fails to keep his side of the bargain."² That is, consumers can assert
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21 against VW Credit, Inc. and VW Credit Leasing, Ltd. the fraud of Volkswagen
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23 Group of America, Inc. and withhold payments pending resolution of their

23 ² Staff Guidelines on Trade Regulation Rule Concerning Preservation of
24 Consumers' Claims and Defenses, published May 4, 1976, p.6. available at:
25 [https://www.ftc.gov/system/files/documents/rules/holder-](https://www.ftc.gov/system/files/documents/rules/holder-rule/760504hidcrule.pdf)
26 [rule/760504hidcrule.pdf](https://www.ftc.gov/system/files/documents/rules/holder-rule/760504hidcrule.pdf)
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claims, including their claims for rescission due to fraud or illegality. As

required by the FTC Rule, the VW Credit contract states in bold:

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEED HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

18. Plaintiffs seek a preliminary injunction to prevent VW Credit from:

(1) accepting payments from consumers on contracts that relate to the

Violating Vehicles, and

(2) reporting derogatory or negative information on credit reports of

consumers who currently own the Violating Vehicles and who are, by

federal law, excused from payment due to the fraud and illegality of the

contracts that they entered for the purchase or lease of the Violating

Vehicles.

JURISDICTION AND VENUE

19. Jurisdiction is proper in this Court because Plaintiff seeks to invoke the FTC Holder Rule against VW Credit, which implicates federal question jurisdiction. Plaintiff seeks rescission and restitution and injunctive relief for a nationwide class of persons that implicates the Class Action Fairness Act, 28 U.S.C. §§

1 1332(d), 1453, and 1711–1715 because the injunctive relief will certainly
2 exceed 5 million dollars. Venue is proper in the United States District Court
3 for the District of Montana pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1441(a)
4 because Defendant’s contacts with this District are sufficient to subject it to
5 personal jurisdiction, and venue is proper in this division because Plaintiff
6 resides in this division.
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10 **PARTIES**

11 20. Plaintiff Will Ballew, a resident of Missoula County, Montana, and citizen of
12 the State of Montana, purchased a 2015 Volkswagen Jetta Sportwagon TDI
13 diesel from Karl Tyler in Missoula, Montana. Plaintiff Ballew financed the
14 purchase through VW Credit.
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17 21. Plaintiff purchased his vehicle, in part, because of the “CleanDiesel” system
18 as advertised by VW that touted the cleanliness of the engine system for
19 the environment and the efficiency and power and performance of the
20 engine system.
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23 22. Defendant VW Credit, Inc. is a Delaware corporation with its principal place
24 of business located at 1401 Franklin Blvd., Libertyville, IL 60048. At all times
25 relevant to this lawsuit, VW Credit Inc. financed the purchase of Violating
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1 Vehicles under the Volkswagen and Audi brand names to consumers in the
2 United States.

3 4 CLAIMS

5 Rescission and Restitution

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7 23. Plaintiff, for himself and all members of the class he seeks to represent, and
8 on the basis of fraud or illegality, seeks rescission of the purchase financing
9 contract or lease contract that was entered into in relation to the purchase
10 or lease of a Violating Vehicle by class members who at the time of this
11 Complaint still own one or more of the Violating Vehicles. Plaintiff also
12 seeks, for himself and the class members, restitution of all amounts paid on
13 the finance or lease contracts.
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17 24. Plaintiff seeks rescission and restitution based upon the common law and
18 deceptive trade practices statutes of all states and territories of the United
19 States, including those statutes identified in the attached summary of state
20 deceptive trade practices statutes.
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22 INJUNCTIVE RELIEF

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25 25. Plaintiff seeks injunctive relief during the pendency of this suit. If Plaintiff
26 and class members continue to make monthly payments, they open
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1 themselves to arguments that they have waived or ratified the fraud and
2 illegality that induced them into the financing contracts. If Plaintiff and the
3 class members stop making payments, as is their right, VW Credit may
4 report derogatory information to credit reporting agencies. The requested
5 injunctive relief is so that Plaintiff and the class members may withhold
6 payment to VW Credit for the Violating Vehicles without fear that VW
7 Credit will ruin their credit by reporting derogatory credit information
8 such as late payments, no payments, voluntary surrender, repossession and
9 the like. Because of the fraud and illegality in the financing contracts,
10 Plaintiff and the class should not be prejudiced in any way for exercising
11 their right to withhold payment. VW Credit should be enjoined from
12 reporting to any credit reporting agency any derogatory information
13 related to the withholding of payments.

20 26. At this point there can be no room for argument about the fact that VW
21 defrauded hundreds of thousands of Americans who purchased the
22 Violating Vehicles. VW has admitted it; the fraud is now common
23 knowledge. The fraudulent scheme is detailed in lawsuits, by the EPA in
24 press releases, and by the testimony of VW presented before Congress. The
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1 probability of success on the merits of this case for Plaintiff and the class
2 members is high.

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4 27. Though many class action cases have been filed, none seek an adequate
5 remedy for consumers; no other class actions have been filed against VW
6 Credit, Inc. in which rescission is sought related to the financing or leasing
7 by consumers of the Violating Vehicles. Plaintiff and the class members are
8 without an adequate remedy at law. If Plaintiff and the class members
9 continue to make payments, they run the risk of waiving their rescission
10 rights, or at least facing a defensive issue that is not now present. Once the
11 legal argument is made that Plaintiff and the class waived or ratified the
12 fraud by continuing to make payments, the legal claim of Plaintiff and the
13 class is irreparably harmed. If Plaintiff and the class seek to withhold their
14 payments without the protection of an injunction against derogatory credit
15 reporting, innocent consumers duped by VW's fraud will be further
16 victimized by Volkswagen. When Plaintiff and the class members tender or
17 surrender their Violating Vehicles back to VW, as may be required in order
18 to preserve their rescission claims, they will be in need of substitute
19 vehicles and credit to purchase or lease substitute vehicles. If VW Credit
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1 and VW Credit Leasing are permitted to report derogatory credit
2 information about Plaintiff and the class members who withhold payments,
3 then Plaintiff and the class members will be unable to purchase substitute
4 vehicles or only to be able to purchase them at higher interest rates due to
5 the derogatory credit reporting by VW Credit.
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8 28. Further, a preliminary injunction will further the public interest as
9 expressed by the FTC Holder Rule. The rule is in place to prevent the
10 situation where the consumer has a valid claim against the seller, but
11 would, without the Rule, still have to pay for the fraud tainted vehicles
12 pending the dispute. To give effect to the FTC Holder Rule and balance the
13 hardship between the innocent purchasers and the self-described "captive
14 financing company" for VW, a preliminary injunction is appropriate.
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19 29. Plaintiff seeks certification of a class of consumers who purchased and still
20 own or owe money on one or more of the Violating Vehicles and financed
21 the purchase either through VW Credit, Inc.
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23 30. The class is so numerous that joinder of all members is impracticable; VW
24 has estimated the class size of Violating Vehicles to be nearly 500,000. The
25 class of Violating Vehicles financed by VW Credit to consumers is expected
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1 to be several hundred thousand folks.

2 31. There are questions of law or fact common to the class, including whether
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4 the class members are entitled to rescission of their financing contracts due
5 to the fraud of VW, which directly or indirectly owns Defendant.

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7 32. The claims of the representative Plaintiff is typical of the claims of the class;
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9 all seek rescission of their financing contracts due to the fraud and illegality
10 that has saturated those contracts.

11 33. The representative Plaintiff and his attorneys will fairly and adequately
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13 represent the class.

14 34. Defendant has acted or refused to act on grounds that apply generally to
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16 the class, so that final injunctive relief or corresponding declaratory relief is
17 appropriate respecting the class as a whole.
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20 **WHEREFORE**, Plaintiff, for himself and all other similarly situated, demands
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22 judgment against VW Credit, Inc. as follows:

- 23 1. For rescission of the financing agreements related to the purchase of
24
25 the Violating Vehicles, and restitution of amounts paid under the
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27 contracts.
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2. For a preliminary injunction to prevent any reporting of derogatory or negative information released to the financing or lease of Violating Vehicles through VW Credit, Inc.;
2. For an award of attorney's fees and costs as provided by any applicable provision of law.
3. For such other and further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED this 14th day of October, 2015.

/s/Timothy M. Bechtold
BECHTOLD LAW FIRM, PLLC

John Heenan
BISHOP & HEENAN LAW FIRM

ATTORNEYS FOR PLAINTIFFS